

**TAX LIMITATION AND  
OPT OUT  
INFORMATION**

**FOR  
SCHOOL DISTRICTS  
ONLY**

**For Taxes Payable in Calendar Year 2009**

**INFORMATION PROVIDED BY:**

**DEPARTMENT OF REVENUE AND REGULATION  
PROPERTY & SPECIAL TAX DIVISION  
445 E. CAPITOL  
PIERRE SD 57501-3100**

## OPTING OUT OF THE TAX LIMITATION (For School Districts Only)

**SCHOOL DISTRICTS** - For taxes payable 2009, and each year after, the only limitation applicable to school districts are the statute levy limitations. If the school district cannot operate on the revenues generated by the maximum levy for general fund and monies from state aid as determined by the funding formula, then the school district may choose to "opt-out" of the general fund levy limitations.

**FOR ALL SCHOOL DISTRICTS** - when preparing your tax requests, note that the County Auditor is **REQUIRED** to levy for revenues lost due to discretionary formulas, abatement of taxes and certain tax increment financing districts. The Department of Revenue will again this year provide you with all this data prior to the time you have to submit your tax request to the County Auditor.

**For school districts receiving state aid**, the calculation of the opt out amount is as follows:

Calculate district need for general fund. This is done by multiplying the FY2009 per student allocation (\$4,664.66) times the State Aid Fall Enrollment (EX: adj. ADM of 560,  $\$4,664.66 \times 560 = \$2,612,210$ ), that is the DISTRICT NEED as determined by the funding formula.

The sum of local property taxes and state aid will provide the \$2,612,210 per State Aid Fall Enrollment.

Suppose School District "A" needs \$2,750,000 from property taxes and state aid to fund their budget, the resolution to opt out must state that the board is opting out for a dollar amount above the calculated district need (EX:  $\$2,750,000 - \$2,612,210 = \$137,790$  – amount of opt out needed)

**To calculate state aid** and determine what part of the DISTRICT NEED is state aid and what part is local property taxes.

EXAMPLE:

2008 VAL @ 85%

AG	\$ 160,750,000	X	2.61	=	\$ 419,558
NA-Z	5,250,000	X	3.61	=	18,953
OO	110,600,000	X	4.10	=	453,460
OTHER	75,100,000	X	8.78	=	659,378
TOTAL					TOTAL
VAL	\$ 351,700,000				EFFORT \$1,551,349
					(amount from local property taxes)

$560 \text{ ADM} \times \$4,664.66 = \$2,612,210 = \text{NEED}$

$\text{NEED} - \text{EFFORT} = \text{STATE AID} \quad \$2,612,210 - 1,551,349 = \$1,060,861 \text{ (state aid)}$

***NOTE:*** Keep in mind that FY2009 local effort utilized by the state funding systems is based on one half of taxes generated in 2008 and one half of taxes generated in 2009 (i.e., FY2008 = November payment of payable 2008 taxes and May payment of payable 2009 taxes) The above example is for a calendar year, not fiscal year. This example also does not take into account any small school adjustments.

**For school districts NOT receiving state aid.** The calculation of the opt out amount is as follows:

Valuations in district times maximum levies. Take this amount from the total amount needed to operate. This is the amount of the opt out.

EXAMPLE:

2008 VAL @ 85%

AG	\$ 160,750,000	X	2.61	=	\$ 419,558
NA-Z	5,250,000	X	3.61	=	18,953
OO	110,600,000	X	4.10	=	453,460
OTHER	75,100,000	X	8.78	=	659,378
TOTAL					TOTAL
VAL	\$ 351,700,000				EFFORT \$1,551,349
					(amount from local property taxes)

Amount needed to operate = \$2,000,000. Opt out amount = \$2,000,000 - \$1,551,349 or \$448,651

### **SCHOOL DISTRICTS TIME LINE**

- Board Meeting in May - Proposed budget to be prepared (SDCL 13-11-2)
- No later than July 15th - publish budget & notice of hearing on budget. (SDCL 13-11-2)
- Before August First - budget hearing to be held (SDCL 13-11-2)
- Fourth Monday in August - Dept of Revenue certifies total value to county auditor (SDCL 10-11-51)
- Before October First - approve budget (SDCL 13-11-2)
- Before October First - report budget and levy amount in dollars or dollars per thousand (general, capitol outlay, retirement / pension & special education funds) to county auditor (SDCL 13-11-3)
- On or before November first - county auditor must submit all tax levy paperwork to Department of Revenue (SDCL 10-13-43)
- On or before December first - Department of Revenue shall review approve/reject levies of all taxing districts within the state, ensuring they have not exceeded the maximum levies prescribed in law. (SDCL 10-13-43)

### **BUDGET STEPS**

- (1) Prepare operating budget
- (2) Calculate district need (\$4,528.80 X State Aid Fall Enrollment)
- (3) If district need amount DOES NOT fully fund budget - you may choose to opt out
- (4) If district need amount DOES fully fund budget, proceed to step 5
- (5) Check with County Auditor(s) first week in September for total value, by class, within school district.
- (6) Using values certified by Department of Revenue - calculate what you need from property taxes to fund your budget.
- (7) Submit tax request to county auditor by October 1st. (For general fund, capitol outlay, retirement/pension and special education fund, request may be made in the form of dollars per thousand) (SDCL 13-11-3)

**FOR SCHOOL DISTRICTS** - May opt out for general fund only. Opting out is to impose an excess levy. The excess levy shall maintain the same proportion represented in the mathematical relationship at the maximum levy.

**If a taxing entity, including a school district**, opts out of the tax limitation, they need to send the County Auditor a copy of the "opt out" resolution along with copies of the minutes of the meeting at which the opt out took place. You also need to send proof of publication / notification. IF the opt out is referred to a vote, the finance officer of the taxing district must certify the outcome of the election to the County Auditor.

**FOR ALL ENTITIES, including school districts** - Opting out - Requires a two-thirds vote of the governing body on or before July 15th. Decision to opt out must be published within ten days of decision. That decision may be referred upon a petition signed by at least five percent of the registered voters in the taxing district and filed with the governing body within twenty days of the publication. Election to be held on or before October 1st.

**IMPORTANT - - Any opt out passed July 1, 2002 or after must specify in the resolution the year or number of years the excess tax levy will be applied. There are also certain requirements concerning the publication of the opt out resolution.**

**If an opt out resolution was passed prior to July 1, 2002 the taxing district does not have to opt out again unless they need to exceed that limitation. In which case, that opt out must meet the same requirements of any other passed July 1, 2002 and after.**

For the first year and subsequent years, the taxing entity has up to that opt out amount to use. If the entity decides to use all, some, or none at all, in years following, that opt out amount is still accessible to the taxing entity. This applies to all opt outs, even those passed July 1, 2002 and after. The only exception is those passed July 1, 2002, the "years following" are the years designated by the opt out resolution.

Example: School District "A" opts out for \$100,000 and requests \$100,000 for the opt out amount. That year the county auditor levies \$100,000 as the opt out amount for that school district. The next year, the school district only needs \$30,000 above the maximum levies. They will request that amount as the opt out amount. County auditor will check to make sure it is within the opt out amount. The following year, the school district needs \$55,000 above the maximum levies. The school district DOES NOT need to opt out again. As long as they do not exceed \$100,000 above the maximum levies, they do not need to opt out and the county auditor shall levy any such amount requested. If they need more than the \$100,000, it will take an opt out resolution.

## **OPT OUT TIMEFRAME**

An opt out should not be done until January 1 or after of the year prior to the year the taxes are payable, but must be done on or before July 15 of the year prior to the year the taxes are payable.

If the opt out decision has been referred to a vote and has been defeated, the governing board may opt out again IF done so prior to July 15 of the year prior to the year the taxes are payable.

The decision to opt out may be rescinded IF done so prior to July 15 of the year prior to the year the taxes are payable. EXCEPT - - If the opt out decision was referred to a vote and withstood the vote, meaning the voters supported the opt out, the governing body CANNOT rescind the opt out. They just do not have to ask for the amount of the opt out.

**SCHOOLS – PLEASE NOTE:**

**NON-AG-Z**

In the examples given, there is the category of “NA-Z”. This is land specifically classified as non-agricultural acreages. It is classified as such due to the fact that it was agricultural land that sold for more than 150% of its agricultural income value.

**MOBILE HOMES**

This fall, the Department of Revenue will again report to you the following categories:

AG – all value classified as agricultural – receives the \$2.61 / thousand levy

NA-Z – all values classified as non-agricultural acreages – will receive the \$3.61 / thousand levy

OO – all values classified as owner-occupied – will receive the \$4.10 / thousand levy

OTH – all other values. These are properties that are not AG, not NA-Z, and not owner occupied. – will receive the \$8.78 / thousand levy.

UTIL – all values of utility companies (Railroad, Electric, Water, Pipeline, Telephone) centrally assessed by the Department of Revenue. – will receive the \$8.78 / thousand levy.

There will also be the additional following categories:

M – these are mobile homes placed on real estate July 1, 1999 and after. These do not have the owner-occupied designation, so will receive the \$8.78 / thousand levy.

M-OO – these are mobile homes placed on real estate July 1, 1999 and after. These do have the owner-occupied designation, so will receive the \$4.10 / thousand levy

These last two categories will NOT be used in state aid calculations and will NOT be used in determining any property tax levy for school purposes (SDCL 13-13-3.1) However, the levy will be applied and taxes will be payable based on these values.

(These values will be used for all other taxing districts, such as county, city, township, etc.)

## RESOLUTION FOR OPT OUT

### FOR SCHOOL DISTRICTS – EFFECTIVE JULY 1, 2002

10-12-43. The governing body of the school district may raise additional revenues for general fund purposes only, from property tax through the imposition of an excess tax levy. The governing body of a school district may impose the excess tax levy with an affirmative two-thirds vote of the governing body on or before July fifteenth of the year prior to the year the taxes are payable. On any excess tax levy approved after July 1, 2002, the governing body of the taxing district shall specify in the resolution the year or number of years the excess tax levy will be applied.

The requirements for an announcement made pursuant to this section are as follows:

- (1) The decision of the governing body to originally impose or subsequently increase an excess tax levy shall be first published within ten days of the decision;
- (2) Publication shall be made at least twice in the legal newspaper designated pursuant to § 13-8-10, with no fewer than five days between publication dates, before the opt out takes effect;
- (3) The announcement shall be at least three newspaper columns in width and four inches in length or at least one-sixth of a page in size, whichever size is greater;
- (4) The announcement shall be headed with the following statement in a typeface no less than eighteen point type: "ATTENTION TAXPAYERS: NOTICE OF PROPERTY TAX INCREASE OF \$(fill in amount)."

The remainder of the announcement shall consist of a reproduction of the "Resolution for Opt Out," including the amount that property taxes will be increased annually by the proposed opt out and a statement of the right to refer the decision of the board to a vote of the people as provided in this section. The secretary of revenue, in rules promulgated pursuant to chapter 1-26, shall prescribe a uniform form to be used by the school district for notification of taxpayers as required by this section.

However, the requirements of subdivisions (3) and (4) shall be waived if:

- (A) The opt out is for less than fifteen thousand dollars; or
- (B) A copy of the resolution for opt out is mailed to every property taxpayer in the local governmental unit, by first class mail or bulk mail, within twenty days of the decision to opt out; and
- (C) A copy of the resolution for opt out is printed in each official newspaper in the local governmental unit's boundaries.

For the purposes of subsections (A), (B), and (C), the first publication is not deemed to have occurred until three days after the mailing is sent or the resolution is delivered to the official newspaper.

The opt out decision may be referred upon a resolution of the governing body of the school district or by a petition signed by at least five percent of the registered voters in the school district and filed with the governing body within twenty days of the first publication of the decision. The referendum election shall be held on or before October first of the year prior to the time the taxes are payable.

The resolution must be on a form prescribed by the Secretary of Revenue

**The time period stated in the resolution shall commence with the taxes payable in the year following the year the opt out is passed and run for the consecutive years mentioned in the resolution.**

**Administrative Rule 64:04:01:28. Form required for opt out resolution.** The form for the opt out resolution required by SDCL subdivision 10-12-43(4) and SDCL subdivision 10-13-36(4) is PT 182. The time period specified in the opt out resolution shall commence with the taxes payable in the year following the year the opt out is passed and run for the consecutive years stated in the resolution. The resolution form shall be signed by all members of the governing body voting in favor of such opt out. However the publication of the resolution requires only the signature of the finance officer accompany the notice.

## **Guideline for “publication”**

### **Opt out - \$15,000 & more**

- 1) Must publish within 10 days of decision
- 2) At least twice in legal newspaper – 5 days between publications
- 3) 3 newspaper columns in width – four inches in length or 1/6 page in size, whichever is greater
- 4) Must be contain the opt out resolution with heading "ATTENTION TAXPAYERS: NOTICE OF

PROPERTY

TAX INCREASE"

#3 & 4 may be waived IF

a copy of resolution mailed to every property taxpayer

AND copy of resolution printed in each official newspaper in the governing units boundary

### **Opt out – less than \$15,000**

- 1) Must publish decision within 10 days of decision
- 2) At least twice in legal newspaper – 5 days between publications
- 3 & 4 above can also be done, but is not mandatory

EITHER CASE - - #1 and #2 **MUST** BE DONE

**RESOLUTION NO. \_\_\_\_\_****ADOPTION OF ANNUAL BUDGET:**

Let it be resolved, that the School Board of the \_\_\_\_\_ School District, after duly considering the proposed budget and its changes thereto, to be published in accordance with SDCL 13-11-2 hereby approves and adopts its proposed budget and changes thereto, to be its Annual Budget for the fiscal year July 1, 20\_\_ through June 30, 20\_\_. The adopted Annual budget levy requests are as follows:

**TAX DOLLAR REQUEST**

General Fund      \$ \_\_\_\_\_

Opt Out Amt      \$ \_\_\_\_\_

Total General  
Fund Req.      \$ \_\_\_\_\_

Special Ed Fund      \$ \_\_\_\_\_

Capitol Outlay      \$ \_\_\_\_\_

Retire./Pension      \$ \_\_\_\_\_

Bond Redemption      \$ \_\_\_\_\_

**TAX LEVY REQUEST**OR      General Fund      \$ \_\_\_\_\_ /per  
\$1,000 of ag valuationOR      Special Ed Fund      \$ \_\_\_\_\_ /per  
\$1,000 of total valuationOR      Capitol Outlay      \$ \_\_\_\_\_ /per  
\$1,000 of total valuationOR      Retire/Pen      \$ \_\_\_\_\_ /per  
\$1,000 of total valuation

(General, special ed, retirement and capitol outlay levies may be requested in a dollar amount or a dollar/thousand. Bond redemption and opt out amounts **MUST** be requested as a dollar amount)

(A list of the changes from the proposed to the adopted is as follows:)



**ATTENTION TAXPAYERS:  
NOTICE OF  
PROPERTY TAX INCREASE  
OF \$\_\_\_\_\_**

**RESOLUTION FOR OPT OUT**

THE GOVERNING BOARD OF \_\_\_\_\_ do state that the above said board is unable to operate under the tax limitation measure currently in statute. We therefore OPT OUT of such tax limitation in the amount of \$ \_\_\_\_\_. starting with calendar year \_\_\_\_\_ taxes payable in the calendar year \_\_\_\_\_. This opt out will be for \_\_\_\_\_ years, which will be through taxes payable in the calendar year \_\_\_\_\_. This action has been taken by the board and approved by at least a two-thirds vote of the board.

This decision may be referred to a vote of the people upon a petition signed by at least five percent of the registered voters in the district and filed with the governing body within twenty days of the first publication of this decision.

Unless this action is referred to a vote of the people and reversed by such vote, this resolution authorizes the county auditor to spread an excess levy to raise tax dollars in the above stated amount.

Signed _____	Board Chairman
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member

**ATTENTION TAXPAYERS:  
NOTICE OF  
PROPERTY TAX INCREASE  
OF \$\_\_\_\_\_**

**RESOLUTION FOR OPT OUT AND VOTE TO BE HELD**

THE GOVERNING BOARD OF \_\_\_\_\_ do state that the above said board is unable to operate under the tax limitation measure currently in statute. We therefore OPT OUT of such tax limitation in the amount of \$ \_\_\_\_\_. starting with calendar year \_\_\_\_\_ taxes payable in the calendar year \_\_\_\_\_. This opt out will be for \_\_\_\_\_ years, which will be through taxes payable in the calendar year \_\_\_\_\_. This action has been taken by the board and approved by at least a two-thirds vote of the board.

Also, be it resolved that the GOVERNING BOARD OF \_\_\_\_\_ will conduct an election to approve or disapprove the tax levy opt out pursuant to SDCL 10-12-43. The election will be held on \_\_\_\_\_.

Signed _____	Board Chairman
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member

DATE \_\_\_\_\_